

REMARKS

Continued examination and reconsideration of this application is respectfully requested in view of the following remarks.

1. Prior Art Rejection

The Examiner rejected claims 1-15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,774,014 to Berler (Berler). Applicant respectfully traverses this rejection on the grounds that Berler fails to disclose, teach or suggest the subject matter of claims 1 and 14 and all claims depending therefrom.

Berler cannot anticipate the present claims as Berler fails to disclose 1) an encoding device that provides 2) a post-purchase indicia on a label and 3) a detecting device that detects the post-purchase indicia. Berler merely discloses a code and reader system comprising a scanner capable of reading a bar code on a label. Berler, col. 1 lines 54-57. The scanner has the ability to decipher the bar code regardless of the bar code orientation as it passes through the scanner field of view. Berler, col. 2 lines 2-8. Berler, however, has no disclosure whatsoever regarding an encoder which encodes a post-purchase indicia onto the label during scanning. Berler further lacks any disclosure of a device to detect the post-purchase indicia.

Nor does Berler teach or remotely suggest the subject matter recited in the present claims. Berler teaches that the bar code itself is the encoding system. Berler, col. 2 lines 45-49. Consequently, scanning decodes the label. Berler, col. 5 lines 61-63. Hence, Berler actually teaches away from encoding the label with an indicia as the label is scanned. Teaching away is a *per se* demonstration of lack of prima facie obviousness. *In re Dow Chemical Co.*, 837 F.2d 469 (Fed. Cir. 1988).

CONCLUSION

In view of the foregoing, claims 1-15 are allowable and an early indication of allowance is solicited.

Respectfully submitted,



James D. Ryndak
Registration No. 28,754

Date: September 10, 2002

RYNDAK & SURI
30 N. LaSalle Street
Suite 2630
Chicago, IL 60602
(312) 214-7770